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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/880,707	06/12/2001	Daniel Yellin	10559-449001 / P10766	5530
20985	7590	03/22/2006		
FISH & RICHARDSON, PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER TORRES, JOSEPH D	
			ART UNIT 2133	PAPER NUMBER
DATE MAILED: 03/22/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/880,707

Applicant(s)

YELLIN ET AL.

Examiner

Joseph D. Torres

Art Unit

2133

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

**JOSEPH TORRES
PRIMARY EXAMINER**

Joseph D. Torres, PhD
Primary Examiner
Art Unit: 2133

Continuation of 11. does NOT place the application in condition for allowance because: The Applicant contends, "The principle articulated by In re Hyatt as cited by the Examiner is applicable only to a claim that includes a single limitation expressed in means-plus-function language. That is not the case here. First, the cited claim does not recite the structural term "means" but instead recites "An article comprising a computer-readable medium." Second, the term "computer-readable medium" has a well-known meaning to persons of ordinary skill in the art and is not a "coined term lacking a clear meaning." See *Personalized Media Communications LLC v. ITC*, 161 F.3d 696, 704 (Fed. Cir. 1998) (discussing the term "digital detector"). Although the term "computer-readable medium" may not specifically evoke a particular structure, it does convey to a person knowledgeable in the art a variety of structures known as "computer-readable media." That indicates that the "computer-readable medium" limitation is not subject to section 112, par. 6. Therefore, the principle discussed by In re Hyatt is inapplicable to claims 16-18, 22 and the rejection should be withdrawn".

The Examiner asserts that 37 CFR 1.75 (i) requires that claim be properly indented to distinguish steps of a method or elements of an article. Since there is no indentation in claim 16, the Examiner can only assume that claim 16 is a single preamble. Claim 35 in In Re Hyatt has a preamble with a single means. Claim 16 in the Applicant's application has a single preamble (which is not given patentable weight) with no specified means and no limitations, even less than what claim 35 in In Re Hyatt has. The Examiner can only assume that the Applicant intends to claim every possible limitation for that preamble including all single means limitations that could be constructed from the single preamble of claim 16. Claim 16 is definitely a single means claim by intended construction and implication.

The Examiner remedied the situation by rejecting claim 16 along with any of its dependant claims reciting that the single limitation in each of its independent claims construed a single single-means limitation. For example claim 17 recites "The article of claim 16 including instructions for causing the computer system to perform joint quantization before using the look-up table to decode the channel-encoded data packet". Instruction is a means that satisfies the criteria, the intent and the spirit of means plus function language in In Re Hyatt: "The long-recognized problem with a single means claim is that it covers every conceivable means for achieving the stated result, while the specification discloses at most only those means known to the inventor". The Applicant has not taught every single set of instructions for implementing the single stated result. In fact, the Applicant has not even taught a single set of instructions for implementing the single stated result.

The Examiner disagrees and maintains the current rejection of claim 16 and its independent claims.

The Applicant contends, "The Office action alleges that quantizing the received packet of encoded data and assigning data erasure symbols to the quantized data by the AM corresponds to a look-up table that approximates an algorithmic decoding process. Applicant respectfully disagrees. First, the received encoded data is not decoded by the AZD. The AM simply quantizes the received encoded data to different output levels (Col. 8, lines 40-45). Furthermore, Kobayashi et al. clearly indicates the decoding process is performed by the iterative sequential application of a "generalized maximum likelihood decoder (MLD)" (Col. 8, lines 66-67 - Col. 9, lines 1-11) and a "generalized Hamming decoder" (Col. 9, lines 51-58) which recover the original information sequence (Col. 11, lines 13-14). Even if the AZD could be considered to involve a look-up table (which applicant disputes), it does not approximate the output of any algorithmic decoding process. Rather, the AM assigns values based on the input level of the encoded data (Col. 6, lines 16-20). It is, therefore, an approximation of an analog value, and not an algorithmic decoding process. Thus, Kobayashi et al. does not disclose or suggest decoding encoded data using a look-up table that stores the approximating output of an algorithmic decoding process".

The IEEE Authoritative Dictionary of IEEE Standards Terms defines decode as to convert data by reversing the effect of previous encoding and defines encode as to produce a unique combination of output signals in response to each group of input signals. The Examiner asserts that the output from the MUX in Figure 14A of Kobayashi is input into a channel modulator to produce a unique signal output, that is, the signal is modulation encoded. The AZD in Figure 14B of Kobayashi approximately reverses the affect of the modulation code.

AZD2 in Figure 12C of Kobayashi approximately reverses the effect of the E3 encoder in Figure 11A of Kobayashi.

No matter how one looks at it, the AZD units approximate the reversed effect of some encoder.